

The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115. (This is a PLR.)

February 15, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of January 18, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing to you requesting a Private Letter Ruling (PLR), pursuant to 2 Ill. Admin. Code Sec. 1200.110, addressing the jurisdictional rules for application of local Retailers' Occupation Tax (ROT), as they pertain to a certain company's retail sales transactions in Illinois. PLRs respond to inquiries made by taxpayers or their representatives under power of attorney (attached). Further, we understand that PLRs discuss tax principals or applications and are binding on the Illinois Department of Revenue (the IDOR) to the extent that the material facts of the situation remain the same, and the law relied upon in the ruling does not change.

FACTS

1. The Business Organization

COMPANY sells building materials to construction contractors and other persons throughout Illinois. COMPANY is headquartered in CITY, Illinois. COMPANY also has nineteen locations throughout the state of Illinois. Each location or site has its own sales office and warehouse. Each site maintains computer terminals linked via telephone lines to the headquarters' central mainframe computer. To streamline its business operations and achieve cost efficiencies, COMPANY has recently centralized its procedures relative to making certain retail sales.

2. Sales Options

Some of COMPANY's customers buy building materials with cash or by credit card. Other customers make purchases through contractual arrangement.

CASH SALES

- COMPANY makes cash sales to walk-in customers at its different sites. When COMPANY makes cash sales at a site, it charges the customers sales tax at the combined state and local tax rate imposed at the site. The building materials purchased are withdrawn from inventory located at the site, and the customer has the option to leave with the materials or have COMPANY deliver them.

CREDIT-CARD SALES

- COMPANY also makes credit-card sales (using commercially-issued credit cards such as Visa, MasterCard, or Discover) to walk-in customers at its different sites. When COMPANY makes credit-card sales at a site, it likewise charges the customers sales tax at the combined state and local tax rate imposed at the site. The building materials purchased are withdrawn from inventory located at the site, and the customer has the option to leave with the materials or have them delivered. Before offering to sell building materials, COMPANY checks the customer's credit on the spot by accessing electronically the pertinent credit-card holder database.

CONTRACT SALES

- Lastly, COMPANY enters into sales contracts with construction contractors within the state. COMPANY makes contract sales to construction contractors engaged in long-term building projects (i.e. residential subdivisions, shopping centers) in Illinois. To ensure the best prices and the availability of building materials when needed, the contractors enter into sales contracts with COMPANY. After entering into sales contracts, contractors place over the life of construction projects, purchase orders with COMPANY. The following steps outline the procedures in connection with making and executing contract sales:

Contract Sales Process

Step 1: Price Quote

- A construction contractor obtains a quote from an COMPANY salesperson whose job is to solicit business for COMPANY but not to accept customer orders. The salespersons are based at (i.e., assigned to) COMPANY's headquarters, although they do spend time travelling throughout assigned sales territories.
- A salesperson creates a quote (i.e., a price estimate and proposal) which a sales manager then approves.
- If the contractor accepts the price, the contractor signs the quote.

- The signed quote is then filed at a site--usually one nearest the contractor .
- COMPANY is now bound to the contractor for price only. However, the contractor has no obligation at this point to place a purchase order, nor has COMPANY tendered to the contractor an unconditional offer to sell any materials.

Step 2: Contract and Credit Application

- Upon receipt of the signed quote, COMPANY prepares a contract (or sales agreement) outlining the agreed upon prices, terms, and conditions. The contract and a credit application are then forwarded to the contractor. (See Exhibits A and B.)
- The contractor signs the contract and then sends the signed contract and completed credit application to COMPANY ' s headquarters.
- If the credit department at the headquarters approves the credit application, then the application and the contract are forwarded for approval and signature to an authorized member of COMPANY's management team at its headquarters.
- A member of the management team at COMPANY's headquarters reviews the contract, signs it, and forwards it to the contractor .
- The contractor signs the contract and returns it to COMPANY's headquarters.
- COMPANY next creates a job file on the contractor.

Step 3: Order Acceptance

- The contractor initiates a purchase order submitted under the contract by placing it with COMPANY's headquarters. The purchase order represents the contractor's acceptance of COMPANY's complete and unconditional offer to sell items identified on the purchase order under the terms of the sales contract.
- Once the order is placed, a clerk enters the order into a computerized order-entry system at the headquarters' central mainframe computer where it appears on a credit-approval screen.
- The credit department at the headquarters then performs a final credit check on the contractor.
- If the contractor fails the credit check, then:
 1. the order is placed on hold and is subject to cancellation;
 2. the contractor is contacted, and
 3. a sales invoice does not get generated.
- If the contractor passes the credit check (and has a sales contract on file), then:

1. COMPANY becomes bound to deliver the building materials to the contractor at the agreed upon prices, terms, and conditions;
2. the headquarters determines the sites from which the materials will be released and delivered to the contractor; this determination is based on where the materials are available and their proximities to the contractor's construction location;
3. a sales invoice (per Exhibit C) is automatically generated on the central mainframe at COMPANY's headquarters and is transmitted to a terminal at the relevant site. COMPANY charges on the invoice sales tax at the combined state and local tax rate imposed at the headquarters' location;
4. a pick list, identifying the building materials ordered by the contractor, is printed at the relevant site;
5. the goods are then released from the site and subsequently delivered to the contractor somewhere in Illinois;
6. the contractor accepts the delivery of the materials and signs the sales invoice;
7. the signed invoice is kept on file at the delivery-origination site.

ISSUE

Where does order acceptance take place for purposes of determining the appropriate state and local sales-tax rate to apply to COMPANY's (1) cash sales? (2) credit-card sales? (3) contract sales?

STATEMENTS

No audit or litigation is currently pending between COMPANY and the IDOR. To the best of our knowledge, the IDOR has not previously ruled on the same or similar issues for COMPANY, nor has COMPANY submitted a petition on a similar issue and withdrawn it before a letter ruling was issued. The IDOR did issue a General Information Letter (GIL) on these issues, which has been enclosed.

LAW

A. Sales Taxes

1. State Sales Tax

Illinois imposes a Retailers' Occupation Tax (the ROT) on persons engaged in selling at retail within the state tangible personal property. Illinois imposes the tax at the rate of 6.25 percent of gross receipts from retail sales made. 35 ILCS 120/2-10. 86 Ill. Adm. Code Sec. 130.101.

2. Home-Rule Sales Tax

The Illinois Constitution authorizes home-rule units (e.g. municipalities) to exercise certain governmental powers. Sec. 6(a), Art. VII, Ill. Const. A home-rule unit may for example impose taxes upon occupations. Sec. 6(e), Art. VII, Ill. Const. In other words, a home-rule municipality may impose a tax upon all persons engaged in the business of selling at retail within its municipality tangible personal property. The tax rate may be imposed in 0.25 percent increments. 55 ILCS 5/5-1006. 65 ILCS 5/8-11-1.

3. RTA-ROT

The state imposes a Regional Transportation Authority Retailers' Occupation Tax (the RTA-ROT) on persons engaged in selling at retail within certain counties tangible personal property. The RTA-ROT is imposed at rates ranging from 0.25 to 1 percent. 86 Ill. Adm. Code Sec. 320.101(a).¹

B. Order-Acceptance Point

In determining the location of a sale for taxing purposes, the IDOR believes that the single most important element is the location where the seller accepts the customer's purchase order.² 86 Ill. Adm. Code Sec. 270.115(b)(1), 220.115(c)(1), 630.120(b)(1), and 320.115. St 91-1008-Private Letter Ruling (PLR) (December 18, 1991), ST 99-0260-General Information Letter (GIL) (August 25, 1999), ST 00-0020-GIL (January 26, 2000), ST 00-0038-GIL (March 6, 2000), and ST 00-0085-GIL (April 19, 2000), PLR 81-1566 (January 19, 1981), PLR 82-0405 (April 27, 1982), PLR 83-0579 (July 12, 1983), and PLR 90-0857 (December 24, 1990), ST 93-0569-GIL (November 8, 1993), and ST 92-0333-PLR (June 30, 1992). The IDOR will assume, absent clear proof to the contrary, that the seller accepts the purchase order (i.e., makes the sale or executes the contracting action) at the place of business where the seller receives it from the purchaser. This is the case regardless of whether or not the purchaser takes delivery there--provided that the purchaser does receive physical possession of the property somewhere in Illinois. If the order-acceptance point is in Illinois, the location from which goods are shipped is also not controlling in connection with imposition of local sales taxes. 86 Ill. Adm. Code Sec. 270.115(b)(2), (3) and (c)(1). Under long-term or master contracts (implemented when the customer places specific orders when goods are wanted), the seller's place of business with which specific orders are placed--rather than the place where the seller signs the master contract--determines where the seller is engaged in business for locally-imposed sales taxes. 86 Ill. Adm. Code Sec. 270.115(d).

The IDOR has explained in several PLRs and GILs where it considers a purchase order to be accepted for purposes of local sales-tax imposition. In one GIL, a company enters into a master sales agreement with a customer. The agreement is submitted by the customer to company office A. When the customer under the agreement wishes to acquire specific goods, a purchase order, referencing the agreement, is placed with company office B. The purchase order represents the customer's acceptance of the company's complete and unconditional offer to sell the goods identified on the purchase order under the terms outlined in the agreement. The purchase order is placed with the company's personnel in office B, logged in as received, and forwarded to office A where the order is released for processing and billing. The IDOR opined that, if the purchase order were accepted in City B, as discussed above, the state and local rate in effect at office B would apply. ST 00-0020-GIL (January 26, 2000).

In another GIL, the IDOR writes that '(i)f an order is placed in one Illinois location, while the property is located in another Illinois location, the [IDOR] will consider the place at which the order is accepted to govern for purposes of imposition of the local taxes. In situations where an order originally placed with one location is processed and accepted at a second location, where the credit-card information is accepted and the sales invoice or other paperwork is generated, the tax rate of the second location would apply.' ST-98-0338-GIL (November 9, 1998).

In the third GIL, a retailer writes that its customers' orders are taken by salespeople located at a field office and entered by them into a computerized order-entry system via remote hand-held transmitters which plug into telephone lines. The orders are electronically transmitted directly from the salespeople to the retailer's central computer located at its corporate headquarters in Milwaukee. The orders then appear on a credit-approval screen. If approved by the headquarters' credit department in Milwaukee, the orders are printed, and the items are shipped to customers in Illinois. The IDOR opined in the GIL that the final acceptance of the orders takes place in Milwaukee rather than at the field office where salespeople take the customers' orders. ST 93-0569-GIL (November 8, 1993).

In a PLR, the retailer writes that orders are solicited by its salespeople and forwarded to a corporate office for processing and a final credit check. The IDOR stated that it is the company's intent to accept purchase orders at the office location, since credit checks, a characteristic of final purchase-order acceptance, are made there. ST 92-0333-PLR (June 30, 1992).

ANALYSIS

For walk-in sales at COMPANY's various sales offices/warehousing sites, whereby the customer pays for the building materials with cash or by commercially-issued credit card, the order-acceptance point for purposes of imposing local sales tax is at the various sites, since virtually all of the selling/contracting activity takes place there.

For contract sales, the order-acceptance point is at COMPANY's headquarters in CITY, Illinois. This is because purchase-order acceptance takes place there, as demonstrated by the following activities:

- COMPANY processes and accepts a contractor's credit application there.
- COMPANY signs the sales contract there.
- The contractor upon its own signing returns the sales contract there.
- Subsequent purchase orders (representing the contractor's acceptance of COMPANY's complete and unconditional offer to sell materials identified under the terms of the contract) are placed with the headquarters.
- Upon performance of a final credit check at the headquarters, COMPANY becomes bound to the terms of the contract and orders the warehousing site to release and deliver the materials to the contractor.

- Upon the aforementioned directive, COMPANY generates a sales invoice from its mainframe located at its headquarters.
- It is clearly COMPANY 's intention to accept at its headquarters sales contracts, credit applications, and purchase orders issued under the aforementioned contracts, since, as stated, it wishes to streamline business operations and achieve cost efficiencies by centralizing its selling procedures.

Thus, for contract sales, the local sales tax imposed in CITY, where COMPANY's headquarters is located, should apply.

CONTRARY AUTHORITY AND DISCUSSION

For cash sales and credit-card sales, no contrary authority is found. For contract sales, salespersons solicit sales. The sites compose quotes, print out and mail sales invoices, package and deliver materials to customers, and keep sales invoices on file. The IDOR has indicated nonetheless in its regulations and other authoritative pronouncements that imposition of local sales taxes is based on purchase-order acceptance point and not on where salesmen solicit orders or (if the order-acceptance point is otherwise in Illinois) the location from where goods are shipped to customers. Accordingly, since selling activity--namely, credit approval, signing and submission of sales contracts, placement of purchase orders issued under the contracts, and generation of sales invoices--occurs at COMPANY's headquarters in CITY, Illinois, the local sales tax imposed there should apply to contract sales.

CONCLUSION

1. Based on the foregoing facts, please confirm that COMPANY's order-acceptance point for cash and credit-card sales is at its various sites. Thus, COMPANY should remit to the IDOR the state and local ROT imposed upon retailers doing business at the various sites. This conclusion is consistent with state law and prior IDOR rulings.
2. Based on the foregoing facts, please confirm that COMPANY's order-acceptance point for its contract sales is at its headquarters in CITY, Illinois. Thus, it should remit to the IDOR the state and local ROT imposed upon retailers doing business in CITY. This conclusion is also consistent with state law and prior IDOR rulings.

We request that the IDOR issue a PLR addressing the issues presented. Your cooperation is appreciated.

The imposition of the various sales tax related local taxes in Illinois are triggered when 'selling' occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115.

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local

tax. Although 86 Ill. Adm. Code 270.115 deals with the municipal Home-Rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department.

In the situation you presented, your client's cash and credit-card sales are being made from the same location where the inventory is located. Under these circumstances, the location of the sales offices/warehousing sites is the Illinois jurisdiction that determines the rate of tax for the cash and credit-card sales.

In regards to the contract sales you describe, the purchase order is placed by the contractor at the company's headquarters. The company does not become bound to deliver the materials until the company's headquarters accepts the contractor's purchase order. Therefore, for contract sales, the location of the company's headquarters is the Illinois jurisdiction that determines the rate of tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

MAJ:msk
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¹ The board of commissioners of any county water commission district may also impose a sales tax on retailers of tangible personal property--the County Water Commission Retailers' Occupation Tax (The CWC-ROT). 70 ILCS 3720/4(a). The county may impose the CWC-ROT at a rate of 0.25 percent of the gross receipts from retail sales. 70 ILCS 3720/4(b). DuPage is currently the only county to impose the tax. All retailers doing business within the DuPage Water Commission district must collect the tax on their sales made there. Information Bulletin FY88-12, Illinois Department of Revenue (the IDOR) December 1, 1987. 86 Ill. Adm. Code Sec. 630.101(a).

² '(T)he seller's acceptance of the purchase order or other contracting action in the making of the sales contract is the most important single factor in the occupation of selling. If the purchase order is accepted at the seller's place of business within the municipality or by someone who is working out of such place of business...or if a purchase order which is an acceptance of the seller's complete and unconditional offer to sell is received by the seller's place of business within the home rule municipality or by someone working out of such place of business, the seller incurs Home Rule...Retailers' Occupation Tax liability in that municipality if the sale is at retail and the purchaser received the physical possession of the property in Illinois.' 86 Ill. Adm. Code Sec. 270.115(b)(1).